

EXHIBIT D

REPORTER'S TRANSCRIPT OF RECORD ON APPEAL
VOLUME 5(PAGES 858-1102)(END)

DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE FIRST APPELLATE DISTRICT

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

No.

Alameda Co No.
141033

IVAN KILGORE,

Defendant and Appellant.

COPY

REPORTER'S TRANSCRIPT OF RECORD ON APPEAL

From Judgment of the Superior Court of the State
of California, in and for the County of Alameda

THE HONORABLE KENNETH R. KINGSBURY, JUDGE

---oOo---

MARCH 24, JUNE 27, JULY 11, JULY 14, JULY 21,

AUGUST 15, DECEMBER 5, 2003, JANUARY 9,

FEBRUARY 19, MARCH 10 & APRIL 9, 2004

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IN PROPRIA PERSONA

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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE KENNETH R. KINGSBURY, JUDGE
4 DEPARTMENT NO. 6

5 ---oOo---

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7
8 THE PEOPLE OF THE STATE OF CALIFORNIA

9 Plaintiff,

10 vs.

Nos. 141033

11 IVAN KILGORE,

12 Defendant.

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18 COURTHOUSE, OAKLAND, ALAMEDA COUNTY, CALIFORNIA

19 ---oOo---

20 TRANSCRIPT OF REPORTER'S RECORD ON APPEAL

21 ---oOo---

22
23 A P P E A R A N C E S

24 For the Plaintiff: THOMAS J. ORLOFF
25 District Attorney
26 BY: DARRYL STALLWORTH, Deputy

27 For the Defendant: DEBORAH LEVY, ESQ.
28 WALTER K. PYLE, ESQ.

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1 MONDAY, MARCH 24, 2003

2 ---o0o---

3 - P R O C E E D I N G S -

4 ---o0o---

5 (Whereupon, the following proceedings were had in
6 open court without the presence of the jury)

7 THE COURT: In the matter of People versus
8 Kilgore. The jury is not here. Ms. Levy is here, and
9 Mr. Stallworth was here but had to go.

10 We have received another note from the jury
11 indicating that they wanted all of the testimony of
12 Shanae Anderson and portions of Sergeant Green's
13 testimony that refer to his interview with Shanae on
14 July 16 and 17.

15 Mr. Dohrmann has indicated that he has the
16 testimony of Shanae Anderson ready to go. He is working
17 on Sergeant Green's.

18 It is my understanding, Ms. Levy, that you have
19 spoken with Mr. Stallworth, and both of you indicate
20 that in terms of at least Shanae Anderson's testimony,
21 it's okay if he goes up and reads it to them upstairs.

22 MS. LEVY: That's correct. And, Judge, even
23 in terms of Sergeant Green's, Darryl's directions to me,
24 or whatever, Jerry and I agree to it, and it should be
25 fine.

26 THE COURT: So, my suggestion is go ahead and
27 read Shanae's testimony to them, and tell them you are
28 working on Sergeant Green's. And when you have those

1 portions, give us an idea so we can let Ms. Levy Mr.
2 Stallworth know. And when we have those portions ready
3 to go, we will do it.

4 (Whereupon, the mid-morning recess was taken)

5 ---o0o---

- AFTERNOON PROCEEDINGS -

---o0o---

(Whereupon, the following proceedings were had in open court without the presence of the jury)

THE COURT: The record should reflect in the Kilgore matter that counsel are both present.

Mr. Dohrmann has prepared the second part of the testimony that's asked for by the jury, and that was the selected portion of Sergeant Green's testimony that dealt with cross-examination of Shanae Anderson. Copies have been provided.

It is my understanding that it's okay for him to read it without us being present?

MS. LEVY: Yes, Your Honor.

MR. STALLWORTH: Yes, Your Honor.

THE COURT: Thanks. Anybody have anything they want to say for the record at all?

MR. STALLWORTH: No, Your Honor.

MS. LEVY: No, Your Honor.

(Record re-read by the Reporter)

(Whereupon, the mid-afternoon recess was taken)

---o0o---

1 **- AFTER RECESS -**

2 ---o0o---

3 (Whereupon, the following proceedings were had in
4 open court without the presence of the jury)

5 THE COURT: In the Kilgore matter, both
6 counsel are present, as is Mr. Kilgore.

7 Mr. Juarez, you indicated that the jury stated
8 they have reached a verdict?

9 THE BAILIFF: Yes.

10 THE COURT: All right. Both sides ready for
11 the jury?

12 MR. STALLWORTH: Yes, Your Honor.

13 MS. LEVY: Yes, Your Honor.

14 THE COURT: Before I call for the jury, ladies
15 and gentlemen, I know this is an emotional time for
16 everybody. I would ask you to keep your emotions in
17 check.

18 Bring the jury down.

19 ---o0o---

20 (Whereupon, the following proceedings were had in
21 open court with the presence of the jury)

22 VERDICT OF THE JURY

23 THE COURT: Good afternoon, ladies and
24 gentlemen. The record should reflect that the twelve
25 seated jurors are here.

26 And I understand, juror No. 6, you were selected
27 as the foreperson?

28 JUROR NO. 6: Yes, Your Honor.

1 THE COURT: Deputy Juarez told me you reached
2 a verdict?

3 JUROR NO. 6: That's correct.

4 THE COURT: Could you please give the forms to
5 Deputy Juarez?

6 In just a minute, I'm going to hand these forms
7 to Ms. Boyns for the reading of the verdict. Please
8 listen carefully to make sure that the verdict as read
9 is your true and individual verdict.

10 Once the verdicts are read, I will ask either
11 attorney if they would like the jury polled. And what
12 that means is Mrs. Boyns will ask you a question and she
13 will start with juror No. 1: Is the verdict as read
14 your true and correct verdict? Yes or no. No. 2? No.
15 3? Et cetera. (Examining)

16 Ms. Boyns.

17 THE CLERK: Okay. Ladies and gentlemen of the
18 jury, will you please listen to the reading of the
19 verdict. Omitting the title of the court and the cause.

20 Verdict of jury: We, the jury in the above-
21 entitled cause, find the defendant, Ivan Kilgore, guilty
22 of a felony, to wit: Murder in the first degree, a
23 violation of section 187 of the Penal Code as charged in
24 the Information.

25 Special circumstance: We, the jury, further find
26 true the alleged special circumstance that the murder in
27 the first degree was intentional and perpetrated by
28 means of discharging a firearm from a motor vehicle

1 intentionally at another person or persons outside the
2 vehicle, with the intent to inflict death.

3 We, the jury, further find that in and during the
4 commission and attempted commission of the above
5 offense, the said Ivan Kilgore did personally and
6 intentionally discharge a firearm and proximately cause
7 death to William Anderson, 12022.53(d) PC.

8 March 24th, 2003. Foreperson, No. 6.

9 THE COURT: Ladies and gentlemen, was the
10 verdict just read by Ms. Boyns your true and correct
11 verdict?

12 (Jury agrees)

13 THE COURT: Would either side like the jury
14 polled?

15 MR. STALLWORTH: I do not, Your Honor.

16 MS. LEVY: Your Honor, the defense would
17 request that. Thank you.

18 THE COURT: Thank you.

19 THE CLERK: Ladies and gentlemen of the jury,
20 I'm going to ask you each individually if the verdict as
21 just read was your true and individual verdict.

22 Juror No. 1, was the verdict as just read your
23 true and individual verdict?

24 JUROR NO. 1: Yes.

25 THE CLERK: Juror No. 2, was the verdict as
26 just read your true and individual verdict?

27 JUROR NO. 2: Yes.

28

1 THE CLERK: Juror No. 3, was the verdict as
2 just read your true and individual verdict?

3 JUROR NO. 3: Yes.

4 THE CLERK: Juror No. 4, was the verdict as
5 just read your true and individual verdict?

6 JUROR NO. 4: Yes.

7 THE CLERK: Juror No. 5, was the verdict as
8 just read your true and individual verdict?

9 JUROR NO. 5: Yes.

10 THE CLERK: Juror No. 6, was the verdict as
11 just read your true and individual verdict?

12 JUROR NO. 6: Yes.

13 THE CLERK: Juror No. 7, was the verdict as
14 just read your true and individual verdict?

15 JUROR NO. 7: Yes.

16 THE CLERK: Juror No. 8, was the verdict as
17 just read your true and individual verdict?

18 JUROR NO. 8: Yes.

19 THE CLERK: Juror No. 9, was the verdict as
20 just read your true and individual verdict?

21 JUROR NO. 9: Yes.

22 THE CLERK: Juror No. 10, was the verdict as
23 just read your true and individual verdict?

24 JUROR NO. 10: Yes.

25 THE CLERK: Juror No. 11, was the verdict as
26 just read your true and individual verdict?

27 JUROR NO. 11: Yes.

28 THE CLERK: And juror No. 12, was the verdict

1 as just read your true and individual verdict?

2 JUROR NO. 12: Yes.

3 THE CLERK: Okay. Your Honor, the verdict has
4 been affirmed as read by all twelve jurors.

5 THE COURT: Any legal cause why the verdict
6 should not be recorded?

7 MR. STALLWORTH: No, Your Honor.

8 MS. LEVY: No, Your Honor.

9 THE COURT: Record the verdict, please.

10 THE CLERK: The verdict is recorded.

11 THE COURT: Thank you.

12 With the recording of the verdict, you will not
13 have to hear me say "do not discuss this case with
14 anyone" again, or "do any independent investigation."
15 At this point all those restrictions are eliminated.

16 I'm directing Mr. Dohrmann right now to have all
17 personal information, such as names, any kind of
18 address -- I don't think there are any phone numbers in
19 the personal information here -- kept confidential from
20 the record.

21 Just as it is your right to speak to anyone you
22 wish to speak to at this point, it is equally and
23 perhaps more important you have a right not to talk to
24 anybody that you don't want to talk to about this case.

25 If someone wants to talk to you, that is
26 completely your decision. But if you tell them you
27 don't want to talk to them, and they persist, please let
28 the Court know either through the bailiff or telephoning

1 this phone number that's listed on the board there, and
2 we will handle it. I have only had that happen, I
3 think, twice in my career. It normally doesn't, but I
4 wanted you to know that.

5 This case was a relatively short case, although
6 obviously the issues involved here were very serious.
7 This is the kind of situation that, sitting as a judge
8 and having been in this business for a lot of years, I
9 prefer not to decide this kind of issue myself, because
10 I'm not representative of the whole community, which all
11 of you are. You bring to us that layman's expertise
12 from the community.

13 I know it's been an imposition on each one of you
14 and your time, on all of your time. The schedule has
15 been a bit off again on again, but I want to commend you
16 all. This jury was, once we got started, I think, on
17 time every time, every day, and it certainly made it
18 much easier for the Court to have that happen.

19 Sometimes the attorneys will want to talk to you
20 after a trial just to get your own personal take on how
21 the trial went, on what you thought the evidence showed,
22 on what you thought the evidence didn't show. They
23 don't do that out of any sense of morbid curiosity, but
24 both Mr. Stallworth and Ms. Levy are professional
25 attorneys, and they are not looking for a report card on
26 their performance, I don't think, but it is helpful
27 perhaps in future cases that both may try if there are
28 things that you observed that you thought made the trial

1 clearer to you or perhaps was left somewhat muddled.
2 They would like to know that, because they will be back
3 in other courtrooms trying cases again.

4 I know that the \$15 a day that jurors make, and
5 although our luncheon budget has increased somewhat,
6 there is not a great amount of reward there, either,
7 certainly not for the services you provide for the
8 court.

9 On behalf of the court, on behalf of me
10 personally, you certainly made my life very easy during
11 the course of this trial, and I personally thank you.

12 Your jury duty, as it were, your civic obligation
13 for the year, is now taken up. If you get called again
14 within a year, please remember this period of time,
15 mid-March, so you can send it back, if you do not wish
16 to serve on another jury for the next year, letting them
17 know, "I served in Department 6 and roughly during March
18 of 2000."

19 With that, you are excused. And, normally, if
20 the attorneys want to speak with you, they will come up
21 to the 6th floor. If you don't want to speak with them,
22 pack your stuff up and feel free to leave.

23 If you don't mind talking to them for a few
24 minutes, you can wait on the 6th floor. They will be
25 here with me for a couple of minutes and after that, I
26 will release them. Probably less than five minutes.

27 So, you are excused. Thank you.

28 ---o0o---

1 (Whereupon, the following proceedings were had in
2 open court without the presence of the jury)

3 THE COURT: I don't know as of this point
4 whether or not Mr. Kilgore has a bail. It appears he
5 does not.

6 In any event, his bail will remain at no bail at
7 this point.

8 I'm going to refer Mr. Kilgore's matter to the
9 probation officer for a report pursuant to 1203 of the
10 Penal Code. The only question is would you like it on a
11 time-waiver or no-time-waiver basis?

12 And, Mr. Kilgore, what that means is, I'm going
13 to have a probation officer interview you to write a
14 report for the court and for me to consider at the time
15 of sentencing. You have a right to have that report
16 within 20 judicial days, which usually works out to
17 about a month.

18 If you wish to waive time for sentencing, I can
19 set it at some point beyond that, depending on how long
20 it's going to take your attorney to do whatever she has
21 to do.

22 THE DEFENDANT: Yes, I would like to waive
23 time.

24 THE COURT: It will be so noted. Do you have
25 a date in mind, Ms. Levy?

26 MS. LEVY: No, Your Honor. If I may have a
27 moment.

28 THE COURT: Sure.

1 MS. LEVY: (Examining)

2 THE COURT: I'm going to be gone the early
3 part of May.

4 MS. LEVY: I'm sorry, Your Honor?

5 THE COURT: I will be gone the early a part of
6 May.

7 MS. LEVY: Your Honor, would the Court be
8 willing to put this over to the early part of June? I
9 know Mr. Kilgore is willing to waive time.

10 THE COURT: Any objection?

11 MR. STALLWORTH: No objection, Your Honor.

12 THE COURT: Pick a day.

13 MS. LEVY: Is the Court available on Friday?
14 Or, if not --

15 THE COURT: That's my Law & Motion day
16 normally. Let me just look here.

17 THE CLERK: June 6th is Law & Motion.

18 THE COURT: It would be on June 13th.

19 MS. LEVY: That would be fine, Your Honor.

20 THE COURT: All right. We have the issue
21 remaining as to what to do about that prior conviction.

22 MR. STALLWORTH: At this point, given the
23 jury's verdict --

24 THE COURT: You want to hold that until the
25 same day?

26 MR. STALLWORTH: Yes.

27 THE COURT: So, the issue on the prior will
28 also be continued until the 13th. And hopefully by

1 then, if you intend to proceed on that prior, Mr.
2 Stallworth, you will have whatever documents you need
3 and be prepared to proceed -- documents and/or
4 witnesses, obviously.

5 MR. STALLWORTH: That's correct, with notice
6 to both the Court and counsel way ahead of time.

7 THE COURT: All right. You can do that as
8 late as the 13th, Ms. Levy?

9 MS. LEVY: Yes, Your Honor. That would be
10 fine.

11 THE COURT: Anything further that either of
12 you would care to say for the record today?

13 MR. STALLWORTH: No, Your Honor.

14 MS. LEVY: No, Your Honor.

15 THE COURT: See you on the 13th at 9:00
16 o'clock for report and sentence.

17 (Whereupon, the evening recess was taken)

18 ---o0o---

1 FRIDAY, JUNE 27, 2003

2 ---o0o---

3 - P R O C E E D I N G S -

4 ---o0o---

5 DEFENDANT'S MOTION FOR NEW TRIAL

6 THE COURT: All right. In the matter of
7 People versus Kilgore, No. 141033.

8 The record should reflect that Mr. Stallworth is
9 here representing the People; Ms. Levy is here repre-
10 senting Mr. Kilgore; and Mr. Kilgore is present in
11 custody.

12 Just for the record, so it's completely clear,
13 before counsel arrived this morning, when I got here
14 this morning, Mr. Kilgore was here and neither counsel
15 was here. I had some brief unreported discussions with
16 Mr. Kilgore about the nature of what he was seeking.

17 The reason I did that is because, after reading
18 the transcript of the proceedings on June the 13th and
19 the motion that was filed by Ms. Levy, I got some
20 indication that maybe I had misconstrued what Mr.
21 Kilgore was seeking to do, and I wanted to clarify that,
22 and I believe we did, but perhaps not. We will discuss
23 that in a moment.

24 In addition to that, just so the record is
25 completely clear, that at Mr. Kilgore's request, I did
26 show him one appellate decision that he cited for me,
27 People vs. Dennis, in 177 Cal.App.3d; I also showed him
28 portions of People vs. Stewart, at 171 Cal.App.3d;

1 Evidence Code 958, which deals with a possible waiver of
2 attorney-client privilege, where in a criminal case
3 could be brought to bear if there was a claim of
4 ineffective assistance of counsel.

5 That was the sum and substance of it.

6 There was also some discussion about whether the
7 proceeding this morning would be, quote, unquote, in-
8 camera. My response was, "Depends."

9 There was also a question by Mr. Kilgore as to
10 whether or not things he said during a motion for new
11 trial alleging ineffective assistance of counsel, if
12 they did come to the fore at a formal hearing in that
13 regard, after a formal motion was made, would he have
14 any kind of immunity as to that, and I told Mr. Kilgore
15 I don't give advice.

16 I would be glad to share my books with you, but I
17 don't give legal advice. Mr. Kilgore that's basically
18 what I remember saying. Is there anything that you want
19 to add to that?

20 THE DEFENDANT: No.

21 THE COURT: All right. Basically I had
22 calendared this after our initial discussions last time
23 for a Marsden motion. But in looking at counsel's
24 motion again, which I did not have a great opportunity
25 to do the last hearing, and reading the transcript of
26 what pretty obvious to me Mr. Kilgore was trying to
27 communicate to the Court, I had some second thoughts
28 about what he was seeking to do, and I was looking at it

1 more like he was intending to have a post-trial pre-
2 sentence Marsden motion.

3 In reading the motion again, and in reading what
4 Mr. Kilgore was trying to say to the Court, or what I
5 believe he was trying to say to the Court, that may not
6 be the case.

7 The other alternative -- or the inference that I
8 drew from the readings that I have done is that at this
9 point he was not seeking to make a Marsden motion. What
10 he was seeking to do was to have in part a new trial
11 motion based on ineffective assistance of counsel during
12 the trial. He wasn't seeking to have Ms. Levy
13 discharged at this point, but was seeking to have a new
14 trial granted based on ineffective assistance of
15 counsel, and in that regard, was asking the Court to
16 appoint a separate attorney, or to have a separate
17 attorney appointed to represent him for the purposes of
18 that motion, given that it would be very difficult for
19 Ms. Levy to argue that motion, since she was the trial
20 lawyer.

21 You tell me, where are we going?

22 THE DEFENDANT: No. Basically the other thing
23 about the appointment of the attorney was the fact that
24 I'm not skilled in matters of law.

25 THE COURT: You have to keep your voice up.

26 THE DEFENDANT: Some issues I would like to
27 address concerning Ms. Levy's incompetence have to do
28 with matters involving that was another reason for my

1 request for a newly appointed attorney.

2 THE COURT: As to this matters, is it a
3 Marsden motion or is it a new trial motion on
4 ineffective assistance of counsel?

5 THE DEFENDANT: Yes.

6 THE COURT: I mean at this point the things
7 that have happened have happened. The trial is in the
8 books. And other than your motions now, the only thing
9 that remains is sentencing, other than your motions and
10 the resolution of those motions. It's either going to
11 be --

12 THE DEFENDANT: It's a motion for a new trial
13 basically grants relief for incompetence of attorney.

14 THE COURT: And are you asking the Court to
15 seek for you another court-appointed attorney for a
16 motion for new trial?

17 It's my understanding, in reading the Stewart
18 case, which is cited in Ms. Levy's moving papers, it's
19 at 171 Cal.App.3d, the burden on you would be to show to
20 the Court -- I think the language used is a "colorable
21 claim to ineffective assistance of counsel." Fairly low
22 burden, but nonetheless a burden.

23 If the Court finds a colorable claim, it is my
24 understanding of the law that a separate court-appointed
25 attorney would be appointed to you to represent you for
26 the purposes of that motion, and perhaps other purposes,
27 but initially for the purposes of that motion.

28 THE DEFENDANT: Correct.

1 THE COURT: Is that what you are asking the
2 Court to do?

3 THE DEFENDANT: Correct.

4 THE COURT: In terms of your colorable claim,
5 People vs. Stewart, and I believe other cases, have
6 indicated that in some circumstances those claims should
7 be made in open court and in some circumstances those
8 claims should be made in-camera.

9 And I don't know how many claims you have, but it
10 seems to me that unless all of them need to be held
11 in-camera for whatever reason you are going to tell me
12 about, that perhaps, if there are multiple reasons --
13 if, and I don't know whether there are or not, because
14 we haven't talked about it -- if there are multiple
15 reasons, some of which can be discussed in public and
16 some of which can't, is that the situation?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Is it possible you --
19 and I know you have a spread of papers there -- to
20 separate those that can be discussed in Mr. Stallworth's
21 presence? Because if it gets to a motion for a new
22 trial, the other side is going to be represented. I
23 mean that's not going to be --

24 THE DEFENDANT: Your Honor, I have some 40
25 different issues that I would like to address concerning
26 my attorney's incompetence.

27 THE COURT: Well --

28 THE DEFENDANT: Of those 40 issues, as we

1 discussed, some of them I feel that I can address before
2 Mr. Stallworth.

3 THE COURT: I understand.

4 THE DEFENDANT: Some I can't. In looking
5 through this, it would take some time for me to go
6 through and decipher which ones I can and can't.

7 THE COURT: Do you have them laid out there?

8 THE DEFENDANT: Yes, I have all of the note
9 form and typed -- some of them typed and so forth.

10 THE COURT: Those are your documents.

11 THE DEFENDANT: Yes.

12 THE COURT: You are familiar with them?

13 THE DEFENDANT: Yes.

14 THE COURT: Let's start with the first one and
15 go all the way through. And if you find one of those in
16 looking at it, when you are about to address it, that
17 it's going to say something that for some reason, for
18 instance, might tend to incriminate you at some future
19 trial -- and I don't know about the immunity issue, I'm
20 not advising you in that regard -- if there's some issue
21 about that, set it aside, and then we will discuss
22 whether it's going to be in-camera or not after we go
23 through the ones that aren't.

24 Mr. Stallworth, you seem like a man in need of a
25 tablet.

26 THE DEFENDANT: Your Honor, counsel just
27 advised me that it is best for me to address all of my
28 issues in-camera. She doesn't feel there would be any

1 necessary need for Mr. Stallworth to be present.

2 THE COURT: Well, that's nice for her to say.
3 And you have read the Stewart case, as I have, too. It
4 talks about in-camera if needed.

5 And some of those issues, if they concern things
6 that are part of the public record already that happened
7 at trial, what's the point of asking Mr. Stallworth to
8 leave? Eventually, when a new motion is made for a new
9 trial, he is going to be there, because it's going to be
10 a written motion, and this is just to decide whether or
11 not there is a colorable claim.

12 So, I'm going to ask you -- and, you know, if it
13 looks like it's going to be disclosing some informa-
14 tion -- and you are aware of the Stewart case; that in
15 that case, if it's the same one I remember, it had
16 something to do with a guy trying to escape, and there
17 were a couple of issues raised in that case. One is
18 that the gentleman was not -- didn't have all of his
19 mental faculties and was subject to seizures. I think
20 he said he fell off the roof ladder, and the Court held
21 that that was something that came out at the trial.

22 But the other side of it was, there was a failure
23 to call some specific witnesses. And that may be
24 something that would be -- something that came out of
25 the trial.

26 You know, do the best you can. Err on the side
27 of caution if it's something that you think should be
28 in-camera; but if it's something that came out at

1 trial -- and I am probably going to ask Mr. Dohrmann to
2 prepare the transcript of this proceeding -- so try to
3 be -- don't ramble. I know I tend to. I'm doing it
4 right now. But try to be as concise as you can as I'm
5 going to attempt to take notes.

6 And if you would, just say "first" or "one", or
7 something like that, so, you know, I want to be able to
8 do it in an orderly fashion, so that somebody looking at
9 this in the future, if it's necessary, can make sense
10 out of it.

11 And the reason I'm prefacing my remarks among
12 those things that I read was your exhibit No. 1 to the
13 Marsden motion had with Judge Nakahara back in February,
14 and some of that was a bit rambling. So, be as clear as
15 you can.

16 THE DEFENDANT: Can I have some time to look
17 through this? (Examining)

18 THE COURT: And, Mr. Stallworth, I'm sitting
19 here talking about your position. I don't even know if
20 you want to be here for this.

21 MR. STALLWORTH: I do.

22 THE DEFENDANT: One issue I would like to
23 address to start off is the misstatement counsel made in
24 the language that was used to dismiss the Oklahoma prior
25 as a strike for purpose of impeachment.

26 THE COURT: Okay. Let me make a note. I
27 believe that was discussed on the record; right?

28 THE DEFENDANT: Yes. The defendant's

1 anticipated trial testimony was incorrectly stated --
2 well, if I could.

3 (Short discussion off the record)

4 THE COURT: This is your motion; but, on the
5 other hand, Ms. Levy is an attorney.

6 THE DEFENDANT: If I could, most of things I
7 have written down to read in court, that way I get all
8 of the facts and details in, because I don't want to sit
9 up here and refreshing them out of my memory and
10 misstate them. So, I would like to read what I have
11 written on my motions to be entered into the Court
12 record.

13 THE COURT: That's fine, but read them. Read
14 them knowing I'm going to be listening and writing them
15 down; okay?

16 THE DEFENDANT: Okay. Again, I proffered
17 defendant's anticipated trial testimony was incorrectly
18 stated within the content of the motion, in light of
19 that fact counsel has since being appointed to the
20 defendant's case, had in her possession a copy of the
21 defendant's anticipated testimony.

22 THE COURT: Now, that's the issue, as I
23 recall, that was brought up during the trial about the
24 wording of a motion.

25 THE DEFENDANT: Yes.

26 THE COURT: And that motion was a written
27 motion that was filed --

28 THE DEFENDANT: Yes.

1 THE COURT: -- true?

2 THE DEFENDANT: Yes. At the initial filing of
3 that motion, and when counsel gave it to me to review, I
4 read over it, and I pointed out to her she was incorrect
5 in the language. Counsel stated to me at that time that
6 it was irrelevant.

7 THE COURT: And this is on the record. We had
8 this discussion on the record and it concerned whether
9 or not I was going to allow you to be impeached, if you
10 testify, with the situation in Oklahoma.

11 THE DEFENDANT: Right.

12 THE COURT: And your point was --

13 THE DEFENDANT: First of all, she hadn't --
14 she had a copy of my anticipated testimony from the
15 beginning of her appointment. So, I don't understand
16 how she could have made that mistake.

17 THE COURT: Now, that point was brought to the
18 Court's attention before the ruling was made; true?

19 THE DEFENDANT: True. It was. I'm moving on
20 because it's going --

21 THE COURT: I got it.

22 THE DEFENDANT: -- to go into something else.

23 THE COURT: That's No. 1.

24 THE DEFENDANT: Yes. That's No. 1.

25 As I stated, her response to the misstated
26 language was that it was irrelevant. Well, the
27 irrelevant language, the language became a factor in the
28 Judge's ruling to allow the Prosecutor to use the

1 testimony of the prior to impeach the defendant's
2 defense of unreasonable self-defense as the attorney had
3 mistakingly worded the proffer (sic).

4 THE COURT: Let me say one thing, that you are
5 anticipating and trying to think what my rulings were
6 based on. My recollection is that that situation was
7 cleared up by you and Ms. Levy before I made my
8 decision, and I understood your motion and still made my
9 decision in the corrected form. And if that was wrong
10 on my part, it was; but I decided on what I had before
11 me, which included both your and Ms. Levy's correction
12 of what the true situation is alleged to have been;
13 okay?

14 THE DEFENDANT: Okay.

15 THE COURT: So, I just want to throw that in
16 as my piece.

17 THE DEFENDANT: Okay.

18 Well, at the time that counsel acknowledged to
19 the Court the mistake, she pointed out to the defendant
20 that because of this mistaken language and her
21 admonishing the Court of the issue, that the Judge
22 was -- probably most likely upset due to the fact that
23 she was changing the defense from unreasonable self-
24 defense to reasonable self-defense due to the nature of
25 the language.

26 At the time you made your ruling, I asked counsel
27 to file a writ of mandate to address the issue to the
28 appeals court at that moment. Counsel refused because

1 she didn't know how to file a writ of mandate. She was
2 uncomfortable.

3 And I like to also address counsel, failed to
4 research the application of the law provided under
5 Evidence Section Code (Sic) 1101(c).

6 THE COURT: Is this the same point?

7 THE DEFENDANT: Yes, the same point. Of
8 1101(c) in a matter of a diligent and conscious effort.

9 Counsel may respond to my comments and saying she
10 wasn't conscious of the fact that the prosecution would
11 seek to introduce the prior on the testimony of this
12 subdivision, being that it was subdivision (c) was only
13 made mention during the hearing.

14 In addressing the 1101(b), I feel that counsel
15 failed to argue --

16 THE COURT: Is this a different point now, or
17 same point?

18 THE DEFENDANT: It's all in the same essence
19 of the issue.

20 THE COURT: All right.

21 THE DEFENDANT: I feel counsel failed to argue
22 that section 1101 prohibits admission of other crime
23 evidence for the purpose of showing the defendant's bad
24 character.

25 THE COURT: Mr. Kilgore, let me cut you off
26 there. And the reason I'm doing it is, there was no
27 1101(b) evidence here. The issue was whether or not you
28 could be impeached if you chose to testify. This was

1 not a case where the Prosecutor made a motion under
2 1101(b) that was permitted. I didn't even know if he
3 made one at this point, but that's a different bucket of
4 worms.

5 If a person makes a motion under 1101(b), the
6 conduct itself then is allowed to be introduced to
7 basically show intent, motive, those kinds of things
8 under 1101(b). And I don't think there was a 1101(b)
9 motion here, was there?

10 MR. STALLWORTH: No, there wasn't.

11 THE DEFENDANT: Well, there was a discussion
12 of the Evidence Code of 1101(b) due to the fact that the
13 motion that the District Attorney had failed to impeach
14 the defendants.

15 THE COURT: Different.

16 THE DEFENDANT: Two different things.

17 The other issue I'm addressing, counsel's
18 arguments and her representation on behalf of that issue
19 where I felt she fell short to deny it, first of all,
20 researching the issue of 1101(c). She did 1101(b) but
21 not (c).

22 THE COURT: All right. And as I was --

23 THE DEFENDANT: And as I was saying, the
24 section prohibits admission, the arguments fell short
25 that the section prohibits the admission of other crime
26 evidence for the purpose of showing defendant's bad
27 character or criminal propensity.

28 THE COURT: I'm aware of the provisions of

1 1101(b). I know you want -- you know, I know it's
2 frustrating sitting in custody and writing all of this
3 out. But I'm aware of 1101(b). And any Appellate Court
4 that reads this is going to be aware of 1101(b).

5 THE DEFENDANT: Okay. I'm kind of confused
6 here, because, as I said, I wrote this stuff out, for
7 the purpose of making the record, just read the stuff.

8 THE COURT: Is it all written out?

9 THE DEFENDANT: Yes.

10 THE COURT: You want to file it as written
11 out?

12 THE DEFENDANT: If I file it, it would be open
13 to public view at the hearing.

14 THE COURT: No. I don't know if it would be
15 or not. I'm trying to get you -- you have now spent
16 about 20 minutes on point No. 1.

17 THE DEFENDANT: Yeah.

18 THE COURT: You made your point. It deals
19 with the Court's rulings and her alleged failure to
20 basically ably represent you with regard to that motion
21 concerning the court's allowing you to be impeached on
22 the behavior as to the prior conviction. That you have
23 made clear.

24 But, you know, going on and on and on about it, I
25 mean I know the law requires me to explore it, but if
26 you are going to have 40 of these, it's going to take a
27 long time, and I'm going to ask you, do you have access
28 to a typewriter?

1 THE DEFENDANT: No.

2 THE COURT: I'm going to ask, you know, I want
3 you to give me the summary idea at this point.

4 As you know, the only burden you have here is to
5 raise a colorable claim. This is not your actual motion
6 for a new trial; okay? Sort of the preliminaries of
7 one.

8 THE DEFENDANT: Well, just a couple more
9 comments.

10 THE COURT: All right. Just read them,
11 please, then.

12 THE DEFENDANT: Okay. Furthermore, counsel
13 filed to argue the existence of the policy requiring
14 exclusion of the evidence that forbid the prosecution
15 from using a prior in any form to question the
16 defendant's credibility, because of judicial elements of
17 the crime are not -- do not involve moral turpitude,
18 making an unimpeachable crime; therefore, forbid
19 1101(c).

20 I would like to point out, too, that when my
21 attorney asked the prosecution what fact he chose to
22 prove with the prior testimony, he mentioned something
23 about 27 factors being in my prior testimony that were
24 similar to the present case.

25 My counsel at that time asked, you know, to
26 present to the Court those issues, some 20, I believe he
27 say, and he didn't present any to support his argument
28 for using the prior, which my counsel didn't make any

1 mention of that or refer in her argument.

2 I have to make mention because of that, counsel
3 advised that ruling that the Judge made, counsel advised
4 the defendant not to testify. She also made a record of
5 that.

6 Well, counsel also failed to make a record that,
7 because of that ruling, she changed my defense in the
8 midst of all of the preparation she had previously made
9 to one of reasonable doubt, which she didn't take
10 anytime to prepare, for before that ruling and for that
11 moment in the trial, proceeded to argue a reasonable
12 doubt defense. She also failed to call witnesses.

13 THE COURT: Now, are we into a different point
14 now.

15 THE DEFENDANT: No. Let me stop right there
16 before I continue on with that point.

17 And in light of the issue of counsel refusing to
18 file the writ, I would like to state that it's counsel's
19 duty to preserve actions of defendants, counsel due to
20 take all actions to preserve a defendant's right to fair
21 trial.

22 THE COURT: In theory I'm supposed to know
23 what the law is; okay? I want to just know what your
24 complaints are.

25 THE DEFENDANT: Moving onto another issue --

26 THE COURT: Okay.

27 THE DEFENDANT: -- I would like to address
28 counsel's comments in the closing arguments concerning

1 someone firing shots at the car and someone returning
2 fire is self-defense where it's totally unsupported in
3 the evidence that was presented in trial.

4 Counsel also submitted that during that argument
5 this defendant was sitting in the position where the
6 shooter was located in the car, thus making an impli-
7 cation that the defendant fired the shot, which contra-
8 dicted her argument of reasonable doubt.

9 Furthermore, counsel's request of the self-
10 defense instruction was unsupported, I believe, in the
11 evidence, and its purpose was prejudicial to effect the
12 reasonable doubt argument.

13 Also, counsel attempted to persuade the
14 defendant's inquiry as for the instruction and its
15 prejudicial effect. Counsel sought to introduce this
16 instruction as a tactical strategy to give, quote, the
17 jury any possible means to reach a verdict of not
18 guilty.

19 Hearing the defendant questions counsel's
20 failure -- and this is going to another issue -- call
21 witnesses to support that tactic. Those witnesses
22 were --

23 THE COURT: I'm going to need the names, too.

24 THE DEFENDANT: Those witnesses were Betsy
25 Varela.

26 THE COURT: Spell that.

27 THE DEFENDANT: Yes. B-e-t-s-y, V-a-r-e-l-a;
28 and Halvechia, H-a-l-v-e-c-h-i-a, Osborne,

1 O-s-b-o-r-n-e; and Jamario Hennen, J-a-m-a-r-i-o,
2 Hennen, H-e-n-n-e-n.

3 These witnesses' testimony was relevant to the
4 argument in front of the instructions to support it,
5 such as an instruction which may be -- going into
6 another issue -- pertaining to prior assaults by the
7 deceased and his gang and prior acts of violence.

8 I have here, Your Honor, an affidavit, also a
9 transcribed copy of Jemarrio Hennen's taped statement to
10 homicide officer Lou Cruz, and, again, the affidavits of
11 Betsy Varela and Halvechia Osborne, stating the
12 content -- summary of their testimony.

13 MS. LEVY: Your Honor, I would ask to review
14 those if I'm going to have an opportunity to respond. I
15 have not seen them.

16 THE COURT: All right. So, that's -- so,
17 failure to call witnesses, you have given me three
18 names. You have talked about some documents.
19 Apparently, Ms. Levy is looking at them now in terms of
20 what we ought to do with them.

21 That's that point: Failure to call witnesses?

22 THE DEFENDANT: Yes.

23 THE COURT: Got it. We put what's going to
24 happen with the affidavits on hold. As a part of the
25 other, the statement that was made to Lou Cruz, I'm
26 assuming that all parties have that already.

27 MS. LEVY: Correct, Your Honor.

28 THE COURT: Okay.

1 THE DEFENDANT: I would like to say, in
2 addition to the statement of Jemarrio Hennen, his
3 statements would have undermined some of the prose-
4 cution's argument which he made to the Court, which
5 counsel failed to present, and Jemarrio Hennen is the
6 cousin of the deceased.

7 THE COURT: Okay.

8 THE DEFENDANT: Moving on to another issue, I
9 would like to address counsel's failure to investigate
10 any of the prosecution witnesses before trial.

11 THE COURT: Specifically what do you mean?

12 THE DEFENDANT: Counsel failed to interview
13 witness Matthew Bryant before he testified at trial.
14 Didn't even attempt to make any contact. And when he
15 say counsel, she didn't give the okay to the investi-
16 gator to contact him. I discussed this issue with Ms.
17 Levy before.

18 THE COURT: I have got it: Failure to contact
19 the witness --

20 THE DEFENDANT: Yes.

21 THE COURT: -- Matthew, is it Bryant?

22 THE DEFENDANT: Matthew Bryant.

23 If I may, I would, would like to discuss some of
24 the possibilities that it -- may have arisen had counsel
25 contacted Mr. Bryant.

26 THE COURT: I don't think you really have to
27 do that. Just raise the point.

28 The idea is recognize what your burden is. You

1 are not arguing your motion at this point; you are just
2 trying to show me why you should be appointed an
3 attorney to handle this issue separately. That's what
4 you are trying to do.

5 THE DEFENDANT: Right. I got a better under-
6 standing. Thank you.

7 Raising another issue on Matthew Bryant's
8 testimony is, counsel failed to object and request that
9 the tape be edited to exclude the concocted admissions
10 that Matthew Bryant stated or alleged to have come from
11 the defendant.

12 I would also like to make a record, another issue
13 pertaining to those alleged admissions that Matthew
14 Bryant claimed the defendant made, that counsel failed
15 to object to the prosecution using Matthew Bryant's
16 taped statement, and the content of that statement which
17 was outside of the Judge's limited instructions in
18 closing arguments.

19 Moving on to another issue. Counsel failed to do
20 a demonstrative investigation pertinent to the ability
21 of the witnesses to clearly identify circumstances
22 testified to by those witnesses when viewing through a
23 partially tinted open window.

24 To be a little bit more specific about that
25 issue, there was two issues that I asked counsel, and I
26 know you said I shouldn't get into this, but I feel I
27 need to.

28 One was when counsel did take pictures of the

1 car, I notified her that it appeared, because of the
2 fact that the car had been released from evidence and
3 sold to the public, that the tint on the windows had
4 been changed, and I wanted her to check into that. She
5 failed to do it.

6 I also asked her to have someone positioned in
7 the car with my complexion and my height to give the
8 jury an insight on the ability to identify someone. She
9 failed to do that.

10 Also like to address another issue arising out of
11 the release of the car from the property of the Oakland
12 Police office, I mean department.

13 As counsel failed to file a motion to dismiss the
14 car due to the fact that the possible evidence favoring
15 the defendant was damaged when the car was released from
16 O P.D.'s custody --

17 THE COURT: You don't mean "dismiss the car."
18 I think you probably mean to exclude evidence concerning
19 the car?

20 THE DEFENDANT: Yes. Evidence was excluded.
21 We couldn't review it, we didn't have the opportunity,
22 so forth. And counsel failed to file the motion to
23 dismiss the case due to the probable evidence that may
24 have been favorable to the defense had we been able to
25 research.

26 Counsel refused -- this is a new issue -- counsel
27 refused to call or attempt to locate prosecution witness
28 Terry Dandy.

1 THE COURT: What's the person's name again?

2 THE DEFENDANT: Terry Dandy.

3 THE COURT: This was a prosecution witness --

4 THE DEFENDANT: Yes.

5 THE COURT: -- that the defense failed to
6 locate?

7 THE DEFENDANT: Yes.

8 THE COURT: And somehow that's prejudice to
9 your case, that she didn't locate their witness who
10 didn't testify here?

11 THE DEFENDANT: Yes. If I may, I can go in to
12 explain.

13 THE COURT: About 30 seconds' worth.

14 THE DEFENDANT: I believe it was pertinent to
15 have Mr. Dandy testify in this case due to the fact that
16 he alleged it was two shots fired out there on the
17 scene, for one. One of those shots was unaccounted for
18 on behalf of the defendant by the prosecution witnesses
19 during the trial, which was a major contradiction.

20 It was also a contradiction had Ms. Levy called
21 Jamarrio Hennen.

22 Terry Dandy was also present during an assault
23 against the defendant in which Terry Dandy struck the
24 defendant.

25 This all occurred two days before the shooting,
26 which contradicted all of the prosecution's accounts as
27 far as these assaults occurring months before this
28 alleged shooting occurred.

1 Moving on -- oh, and also concerning Terry
2 Dandy's testimony, he drew a map, which I also have an
3 exhibit here, of when related to other issues that
4 counsel failed to do on my trial concerning ballistic
5 testing, firing, and so forth. Please.

6 (Short discussion off the record)

7 THE DEFENDANT: I like to correct that.
8 Counsel did do a ballistic test, but she failed to
9 convey to the expert the specifics of descriptions given
10 by the prosecution witnesses of the gun. And there is
11 an issue I would like to address outside the presence of
12 Mr. Stallworth concerning that if we can come back to
13 that.

14 THE COURT: Set that one aside.

15 THE DEFENDANT: Okay. Counsel refused to --
16 this is a new issue -- counsel refused to question the
17 integrity of homicide officer Sergeant Green and
18 District Attorney representatives handling the
19 Preliminary Hearing.

20 THE COURT: Refused to investigate the
21 integrity of Green?

22 THE DEFENDANT: Investigate and integrity of
23 Sergeant Green.

24 THE COURT: And who else?

25 THE DEFENDANT: And the district attorneys who
26 handled the Preliminary Hearing.

27 THE COURT: Do you know who that is offhand?

28 THE DEFENDANT: Mean. Paul Mean.

1 MR. STALLWORTH: Jim Meehan.

2 THE COURT: Jim Meehan?

3 THE DEFENDANT: Counsel failed -- this is
4 another issue -- counsel failed to raise the issues
5 concerning the contradiction between witnesses of the
6 description they gave and all statements which some were
7 inconsistent compared to others. But they all
8 contradicted concerning the attire that the defendant is
9 alleged to have on that day. And that was a black
10 beanie, a black cap. And Shanae Anderson, which counsel
11 failed to raise, was in an afro.

12 Counsel refused -- another contradiction:
13 Counsel refused to establish the contradictions of
14 events described by witnesses Raymond Jones, Mary
15 Washington and Mary Loggins that were in contrast of
16 Bianca Moore's and Shanae Anderson's versions of events
17 pertaining to the moment they were able to identify the
18 shooter.

19 MS. LEVY: Your Honor, for the record it looks
20 like Mr. Kilgore is on No. 21.

21 THE COURT: That's fine.

22 THE DEFENDANT: Counsel failed to address the
23 issue pertaining to the extent of Raymond Jones'
24 involvement in relation to the stolen car report and the
25 location in which the car was found.

26 Moving along, counsel failed to elect from the
27 testimony of defense investigator Monte Beers statements
28 that were made in previous interview with Mary

1 Washington concerning her version of someone running
2 from the alleged crime scene and concealing something
3 under their coat.

4 And in addressing the matter of law, which I'm
5 not too clear on, I would like to say that counsel
6 failed to object or file any type of motion of dismissal
7 before the prosecution, using perjured testimony before
8 the course of this trial.

9 THE COURT: What do you mean by "perjured
10 testimony"?

11 THE DEFENDANT: In counsel's closing -- I mean
12 the District Attorney's closing arguments, he stated to
13 the jury that, okay, I will give you that Raymond Jones
14 lied, he was aware of the fact that the gun was in the
15 car at the time they drove over to the scene where the
16 alleged crime occurred.

17 Now, I'm not for sure if that would be considered
18 perjury, use of perjured testimony, knowing on behalf of
19 the prosecution or not, so I said it's an issue of law
20 that another attorney would have to address.

21 THE COURT: Since, Mr. Stallworth, there is no
22 evidence that Mr. Stallworth was there --

23 THE DEFENDANT: Excuse me?

24 THE COURT: Since there is no evidence that
25 Mr. Stallworth was there at the time, I guess that may
26 be his opinion that Mr. Jones gave false testimony about
27 at least portions of it. And that happens, sadly, in a
28 lot of cases.

1 THE DEFENDANT: Counsel failed to ask for
2 instructions relating to the testimony and way the jury
3 would examine the testimony of a drug addict.

4 THE COURT: So, it would go to some
5 witness's -- if a witness were an addict, you are
6 suggesting some instruction should have been offered
7 concerning credibility of a person addicted to drugs?

8 THE DEFENDANT: Yes.

9 Counsel refused to address Raymond Jones'
10 Preliminary Hearing testimony pertaining to his level of
11 intoxication.

12 Counsel also failed to present the conflicting
13 statements of Raymond Jones concerning when the
14 assaults, about when they occurred.

15 THE COURT: About when they occurred, you
16 said?

17 THE DEFENDANT: Yes, when they occurred.

18 THE COURT: And which? You said involving an
19 assault involving Mr. Jones?

20 THE DEFENDANT: Assault against the defendant.

21 THE COURT: Against you.

22 THE DEFENDANT: Yes.

23 THE COURT: By --

24 THE DEFENDANT: The deceased and his gang.

25 THE COURT: And with conflicting information
26 concerned the dates?

27 THE DEFENDANT: Yes.

28 THE COURT: Okay.

1 THE DEFENDANT: Counsel refused to investigate
2 into all and any involvement by the F.B.I. in this case.

3 THE COURT: And, again, to what end did that
4 prejudice your case?

5 THE DEFENDANT: It is my understanding from
6 having a conversation with Mr. Jones a month or so after
7 this occurred, after he had been arrested, that he was
8 being offered a reward that was offered to him by F.B.I.
9 agents and et cetera.

10 During the hearing, the voluntariness of Raymond
11 Jones, counsel failed to inquire into the coercion of
12 the second arrest and the interaction of the District
13 Attorney in that matter.

14 THE COURT: I'm not sure I got that one.
15 During the voluntariness of the testimony --

16 THE DEFENDANT: During the hearing.

17 THE COURT: -- of Raymond Jones. Yes.

18 THE DEFENDANT: Of the voluntariness --

19 THE COURT: Right.

20 THE DEFENDANT: -- of Raymond Jones, counsel
21 failed to inquire into the coercion.

22 THE COURT: Investigate the possibility that
23 those statements were coerced.

24 THE DEFENDANT: Yes. And the interaction of
25 the District Attorney.

26 THE COURT: And the action of whom?

27 THE DEFENDANT: The interaction of the
28 District Attorney with Mr. Jones relating to that

1 coercion.

2 THE COURT: Got it.

3 THE DEFENDANT: Counsel failed to establish
4 some type of calendar dates of Bianca Moore's testimony
5 pertaining to the matters which she gave dates, and so
6 forth, concerning events that occurred between the
7 deceased and the defendant. I'd like to say it was to
8 show lack of credibility on Ms. Moore's behalf.

9 Counsel failed to impeach Ms. Moore concerning
10 the number of times that she claimed to have seen the
11 defendant prior to the shooting.

12 Counsel failed to inquire into issues concerning
13 Bianca Moore's testimony that I have stated or gave --
14 given notes to counsel in relation to Ms. Moore's
15 testimony.

16 I don't know. That's kind of vague.

17 THE COURT: You lost me there.

18 THE DEFENDANT: Well, I gave her notes to ask
19 her certain things, specifics pertaining to her
20 testimony. And counsel failed to --

21 THE COURT: Follow-up on notes that you gave
22 Ms. Levy --

23 THE DEFENDANT: Yes.

24 THE COURT: -- concerning potential
25 questioning of the witness Bianca Moore.

26 THE DEFENDANT: Yes. Also I would like to add
27 with Raymond Jones and Shanae Anderson. I would say
28 every witness.

1 Okay. I think there's about one more issue I
2 would like to address before going or requesting an
3 in-camera hearing, is the fact that counsel failed to
4 request of the Court an instruction for murder in the
5 second degree by means of drive-by shooting and
6 outlining the issues of intent, as the prosecution did
7 for murder in the first degree, by means of drive-by
8 shooting.

9 THE COURT: Okay. Does that summarize those
10 things that should be discussed publicly?

11 THE DEFENDANT: I think that pretty much got
12 to most of them. Yeah. If there's anything else, would
13 I be able to call Mr. Stallworth back?

14 THE COURT: Well, basically you know what this
15 hearing is about. The idea is for you to explain to me
16 why there may be a colorable claim to have counsel,
17 other than Ms. Levy, represent you at a motion for new
18 trial. And I have asked you to divide those into a
19 couple of categories.

20 And I know you have looked at this and I know you
21 have got a list in front of you. But in terms of the
22 things that you are conceding can be discussed publicly,
23 have we pretty much gone through those?

24 THE DEFENDANT: Yes.

25 THE COURT: The thing is, if I decide to
26 release Mr. Stallworth, I don't want to send him back
27 downstairs and bring him back up and send him back
28 downstairs and bring him back up.